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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1962

No. 499

GEORGE E. BALDWIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR GEORGE E. BALDWIN, PETITIONER

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

We will answer separately the briefs filed by:

1. Honorable Archibald Cox,
   Solicitor General and his Associates
   Washington, D. C.
2. Hon. Edward R. Phelps,
   United States Attorney and his Associates
   Springfield, Illinois

QUESTIONS PRESENTED

The Government's brief on pages 1 and 2 improperly states *one question only* which question should have been stated as follows:

Whether there was clear and convincing evidence on which The Jury could find beyond a reasonable doubt that petitioner, GEORGE E. BALDWIN, received income for either 1953 *or* 1954 *which he deliberately and wilfully and with specific intent failed to include in his returns for either of said years and whether the Government proved said wilfullness by independent and additional evidence beyond the mere alleged understatement of his income.*

See cases cited under Subdivisions III, IV, V and VI on pages 12 to 18 and on pages 23 to 27 of the Baldwin Petition herein.

Particularly under the cases cited in article V of the Petition herein, the rule is definitely stated that:

> *"A final element necessary for conviction is wilfullness which involves a specific intent and which must be proved by independent evidence and which cannot be inferred by the mere understatement of income."*

On pages 2 and 3 of the Baldwin petition herein the several questions presented here are clearly stated. Same need not be repeated here.

Furthermore the Government called Petitioner Baldwin's attorney, Roger V. Pierson, as its own first witness. See the testimony of Pierson not only as a witness for the Government but also as a witness for Petitioner Baldwin. (See Petition pages 6 and 7 and testimony of attorney Pierson there referred to.)

From the testimony of the Government's own witness, Pierson, it is entirely clear that under the rules laid down in the cases cited under Sub. II on pages 9 and 12 of the Petition herein and the Government's own evidence that Petitioner Baldwin should have been found *not guilty* on both counts.

Answering the first paragraph of the Government's statement on page 3 we definitely state that the figures at the end of that paragraph for the *alleged* correct income and tax are definitely incorrect as will be later shown in this Petition.

There was no evidence on which the jury could have found beyond a reasonable doubt that petitioner wilfully attempted to evade his income taxes by understating his taxable income in 1953 *and* 1954 *tax returns.* (Answering Government Brief 1 and 2.)

Counsel for the Government entirely overlook the fact that in this *case it was its plain duty to prove beyond a reasonable doubt by clear and convincing evidence that Petitioner, George E. Baldwin, received income for either the year* 1953 *or that of* 1954 *which he deliberately and wilfully and with specific intent failed to include in his income tax report for either of said years.*

Furthermore the Government failed to prove said wilfullness and *specific intent on the part of George E. Baldwin by independent and additional evidence beyond the mere alleged understatement of his income.* (See page 3 of *Baldwin's* Petition here also pages 12 to 27 thereof.) In its opinion the Court of Appeals also entirely disregards its own opinions in the cases above cited, which cases were also cited by Petitioner Baldwin in that Court. Counsel for the Government are in error in stating (page 3) that Petitioner's *reported and correct taxable income are as*

there set forth. In so stating they disregard entirely Petitioner Baldwin's 1000 exhibits (App. Vol. IV, pp. 83-118). Expert Ronat for the Government did the same. On page 3, counsel also disregard the same 1000 exhibits offered by Petitioner Baldwin and admitted without objection by the Government. Counsel refer (page 3) to Government exhibits 1 and 2 (Baldwin Income Tax Reports) and Government Exhibits 150A and 151A (1953 and 1954 charts) prepared by Mr. Ronat with changes during the trial according to his own testimony. Those exhibits were inadmissible.

Counsel state on page 3 that Petitioner Baldwin *radically* understated his gross income for 1953 and 1954. (See page 46 of the Petition herein. See also 1000 Petitioner's Exhibits, Vol. IV, pp. 33-118.)

The "great many payments" mentioned by Counsel were received for interests in oil and gas leases sold by Petitioner Baldwin, according to the Government's own evidence (App. 18-91, 107-162, 181, 267-278) and cannot be considered income to Petitioner Baldwin without further proof as to the actual cost of said oil and gas interests to him. On page 4 the Government states that "Petitioner also placed substantial moneys in a bank account in the names of his brother Albert A. Baldwin and an agent Gerald Rock.

The Government itself called Albert A. Baldwin, Petitioner's brother, as its own witness (App. 182, 189, 190) and is bound by that witness' testimony. Albert Baldwin merely accommodated Petitioner by cashing checks for his brother George to enable Petitioner to obtain ready cash received by him (App. 182).

The Government entirely disregards throughout this case the fact that Petitioner's other brother, Charles Bald-

win, used $7,500.00 in his hands belonging to Petitioner in payment of the latter's indebtedness in a Jackman deal (App. 197).

On page 4 the Government concedes that "*through documents and the testimony of about fifty of its own witnesses* (App. 18-274) *it proved specific payments to petitioner for INTERESTS IN OIL AND MANGANESE VENTURES* (*Arizona Material Service Co.* $20.000.79, *and Danitz* $3,000.00) *which Petitioner was promoting, in the total sum of* $34,884.07 *for* 1953 *and* $47,021.40 *for* 1954 (Supp. R. 41, Gov. Exhibit 151 A) *and showed that these items were not included in Petitioner's bank accounts and were not included in his tax returns* (App. 307-522).

The Government must admit by the testimony of its own fifty witnesses that the sums of money paid to Petitioner by those fifty Government witnesses constituted capital investments by them for Petitioner's interest in those leases and should not and could not be charged against Petitioner as income without at least offering some proof of the cost to Baldwin of those various interests so sold. We are warranted in assuming that Petitioner Baldwin possibly sustained an actual loss on all of the oil interests so sold by him to the Government's 50 witnesses.

Again we call this Court's attention to the Government's admission that some of those fifty Government witnesses testified to payments for *Manganese Ventures*. Again we respectfully call this Court's attention to the cases cited by Petitioner under Sub. VII on pages 18-27 of his Petition herein. It is elementary that investments in a partnership (Arizona Material Service Co. and Danitz) cannot under any circumstances be considered income to a partner until a complete accounting as to the partnership itself.

On page 4 counsel state "When these undeposited and unreflected items are added to the gross business income reported, and this gross income is reduced by both the reported expenses and the additional expenses found by the Government the correct adjusted gross income in 1953 is found to be $32,997.13 and for 1954 $33,403.12." The Government alleges again on page 4 that the adjusted gross income for 1953 is found to be $32,997.13 and for 1954 $33,403.12 as compared with the previously reported gross income of $3473.23 for 1953 (on which a tax of $162.00 was paid in 1953). Reference is made to Government Exhibits 150A and 151A.

Counsel state near the foot of page 4 that $33,403.12 is the income unreported by Petitioner Baldwin for the year 1954. They overlook the fact that $20,600.79 of that amount is charged by the Government for collections made in *Arizona Material Service Company* case and $3,000.00 is charged for the Danitz partnership (see Baldwin Petition p. 43).

At the foot of page 4 and top of page 5—counsel state that Baldwin's returns were made by *an attorney*. They do not say that that attorney was Roger V. Pierson, *the Government's own first witness*. (App. 7-18, Petition pp. 6-7, 31, App. 949). Even though attorney might be wrong Baldwin depended on his advice.

At the top of page 5 Counsel state that attorney Pierson's testimony and a comparison of the total bank deposits with the reported gross income show that the attorney (Government's own witness) based the gross income figures in the tax returns almost exclusively on the deposits in Petitioner's bank accounts and that the attorney's (Government witness) testimony indicated that he was by no means fully informed as to Petitioner's re-

ceipt of the undisputed sums in issue and as to the uses made of them by Petitioner.

Again we respectfully call this Court's attention to the fact that those very bank accounts *so introduced by the Government* show disbursements practically exhausting said deposits. (See last long paragraph on page 5 of Baldwin Petition.) This fact has been entirely disregarded by the Government in all Courts. We repeat that the Government introduced as its own evidence those reports as its Exhibits 1-2, and that the bank statements (Government Exhibits 3-11) show a net income of $435.48 for 1953 and $271.32 for 1954. (Baldwin Petition page 5). *At this point the Government definitely proved Baldwin not guilty.*

Furthermore Counsel for the Government fail to even mention throughout this case the undisputed testimony of Petitioner Baldwin, himself, *that he had no intention of concealing anything from the Government or any one else* (Petition page 45). Both Petitioner and Attorney Pierson courteously handed all of Baldwin's books and records to the Government Expert, Arthur A. Ronat, who testified that he had exclusive possession of same from August 1957 until April 1959 (App. 376). At this point then, Petitioner Baldwin had no intention of concealing anything, according to the Government's own evidence.

On page 4 counsel state "The government, through documents and about fifty witnesses (R. 18-274), proved specific payments to Petitioner for interests in oil and manganese ventures he was promoting, in the total sum of $34,884.07 for 1953 (Supp. R. 37; Gov. Ex. 150A) and $47,021.00 for 1954 (Supp. R. 41; Gov. Ex. 151A) and showed that these items were not reflected in petitioner's bank accounts and were not included in his tax returns (R. 307-522).

Counsel then state that the Government finds that the correct adjusted income for 1953 is $32,997.13 and for 1954 $33,403.12 (R. 522). They then agree that a gross income of $3473.23 was reported for 1953 but do not state that a tax of $162.00 was actually paid thereon. They also state that $1072.92 was reported for 1954. (Gov. Exs. 1 and 2).

Counsel also overlook on page 5 the fact that throughout this entire case no one representing the Government has ever denied Petitioner's definite and direct testimony that he never intended to conceal anything from the Government, from his attorney Pierson or anyone else (Petition 7).

In answer to Counsels' statement at the top of page 5 that attorney Pierson's testimony indicated that he "was by no means fully informed as to Petitioner's receipt of the undeposited sums in issue and as to the uses made of them by Petitioner (*ibid*)," we respectfully refer to pages 6 and 7 of the Petition herein and to the complete testimony of attorney Pierson. (App. 7-17, 949-964, 1048 to 1058). Answering Counsel's argument on page 5 we respectfully state again that the jury could not have neglected to find that:

1. Petitioner Baldwin had no intention of defrauding the Government for the reason that he so stated. (Petition 7). The government does not deny it.

Mr. Ronat, the Government's expert witness never used the word "fraud" but once and then with reference to something entirely irrelevant here.

2. The Government's entire evidence dealt solely with the question of whether Petitioner had more income for the years 1953 and 1954 than he actually reported in his income tax reports.

The Government's own witness, Attorney Pierson, definitely testified that Petitioner Baldwin reported all income to him at the time of the preparation and filing of Petitioner's income tax reports and that Petitioner relied upon and reported according to the advice of his attorney, Pierson, the Government's own witness. The jury had no other evidence on which to find Petitioner guilty.

The jury was bound to find Petitioner not guilty because his own attorney, Pierson, advised him what to include and not to include in his income tax reports and that Petitioner relied upon his attorney's advice.

The jury were bound to find Petitioner not guilty because the Government introduced no evidence whatsoever proving beyond a reasonable doubt by clear and convincing evidence that Petitioner received income for either 1953 or 1954 which *he deliberately and wilfully and with specific intent failed to include in his returns for either of said years.* Petitioner did just as he was advised by his attorney to do.

The jury did not have a word of evidence upon which it could find that Petitioner exercised such wilfullness, *which was necessary to be proven* by *independent and additional evidence* beyond the mere alleged understatement of his income. Admitting then, for the purpose of argument that Petitioner did receive more income for either of the years 1953 and 1954 than he reported in his returns, the Government's case must be dismissed because it did not even offer any additional evidence *beyond the mere alleged understatement of income,* if that.

Counsel must admit that the Government failed to introduce a word of evidence other than the mere alleged understatement of income. We respectfully state that

we have shown without doubt that Petitioner *had no income for either* 1953 *or* 1954 *beyond that which he* reported under advice of his attorney Pierson, the Government's own first witness.

We admit that Special Agent Ronat made a meticulous analysis sifting *everything which he wished to sift,* to support the Government, during almost two years when he had the exclusive possession of all of Petitioner's papers. Counsel overlooked the undisputed fact that Petioner's Bank statements introduced without restrictions as to deductions, show without question, a profit of $435.48 for the year 1953 and $271.32 for the year 1954. We concede that although Attorney Pierson took no credit for the disbursements shown in the bank statements, the Government's evidence in this case actually shows the above annual balances. Special Agent Ronat and his Counsel are bound by their own record. It is also entirely clear from the record that Ronat disregarded all of the 1000 exhibits admitted in evidence on behalf of Petitioner. (App. Vol. IV, pp. 33-118).

We acknowledge the courtesy of counsel in stating several times during this proceeding that they agreed that Petitioner should have a credit of $14,690.80 for 1954.

Those of the 1092 exhibits admitted in evidence without objections or over objections on behalf of the parties at the trial, together with other undisputed evidence prove beyond question that Petitioner had less net income for the years 1953 and 1954 than was reported. Especially is this true when we consider the net amounts shown on the bank statements. (Gov. Exs. 3A-5).

Near the top of page 6 Counsel state that "the jury was warranted in not accepting his proof of staggering

losses" and refer to (Pet. App. 4, 5). We find no such statement there referred to.

We do not understand counsel's unusual statement on page 6 following the above. This Court could not and would certainly not decide this case either partially, or wholly upon that statement. A partnership has absolutely no part in the issues in this case. (Petition, p. 18, Sub. VII).

We respectfully state that the jury was obliged to find Petitioner not guilty on the Government's own evidence by attorney Pierson (Petition 6, App. 7-18) that Petitioner's income tax reports for the two years in question were correct and that Petitioner relied solely upon attorney Pierson's advice. (The Government's own first witness). We do not understand counsel's reference to "Petition, App. 5-6."

We respectfully submit that the jury were not entitled to find adversely to Petitioner where there was absolutely no evidence to support such a finding.

It is indeed unusual for a party to litigation to prove the opposing party not guilty by its own witness and then claim that very party is guilty.

On page 7 Counsel conclude with the statement that "No significant question of law appears in this case, nor anything to indicate that petitioner did not receive a fair trial," and that therefore the Baldwin Petition should be denied.

In reply thereto we respectfully state that the Government *proved by its own first witness,* Attorney Roger V. Pierson, (1) that he represented George E. Baldwin in the preparation of his 1953 and 1954 income tax reports, (2) that he discussed with Baldwin whether or not there

might exist income to Baldwin during the years 1953 and 1954 which was not deposited in the banks, (3) that Petitioner Baldwin relied entirely on his services and advice; and (4) that Baldwin's income tax reports for the 2 years in question were correct in his opinion (App. 7-8).

We repeat that *this was the Government's own witness testifying.*

The Government did not see fit to introduce any evidence whatsoever other than to allege and claim that Petitioner Baldwin had more income for the years 1953 and 1954 than he had reported. In other words the Government offered no independent evidence other than the *alleged understatement of income* to prove beyond a reasonable doubt that Petitioner Baldwin deliberately failed to include any income in his returns.

Furthermore the Government proved by *its own first witness,* Roger V. Pierson, that Petitioner Baldwin acted upon the advice of said Roger V. Pierson after a full disclosure of the facts. As a matter of fact we fail to find the slightest word in the testimony of the Government's witness Arthur A. Ronat *other than the mere receipt of alleged additional income,* to support the Government's claim of wilfullness.

From all of the decisions cited in the Baldwin petition herein, also cited in the trial Court as well as in the Court of Appeals, and entirely disregarded by both Courts, *a final element necessary for conviction is wilfulness which involves a specific intent and which must be proved by independent evidence and which can not be inferred by the MERE UNDERSTATEMENT OF INCOME,* (See Baldwin petition pages 9-26).

It is entirely clear from the Government's own evidence in this case that Petitioner George E. Baldwin, the taxpayer here, acted in good faith upon the advice of his attorney Roger V. Pierson (the first witness called by the Government) after a full disclosure of the facts to such attorney. (2) The Government entirely failed to prove beyond a reasonable doubt that Petitioner Baldwin *wilfully and deliberately failed to include any income in his returns.*

That burden rests upon the Government from the beginning to the end of the trial. The final element necessary for conviction is wilfulness which involves a specific intent *and which must be proved by independent evidence and which cannot be inferred by the mere understatement of income.* Fraud is never presumed but must be established by clear and convincing evidence. (See Baldwin Petition herein pages 9-27). We repeat that Counsel here as well as in the Court of Appeals did not see fit to *even mention the cases cited* on the above pages of this petition.

We therefore respectfully suggest to this Honorable Court that Petitioner Baldwin's petition be allowed, and that a writ of certiorari be issued. *We will now answer the copy of the Government's brief filed in the Court of Appeals in answer to our original brief filed there.*

Hon. Edward R. Phelps, United States Attorney and his associates at Springfield, Illinois, in answer to Petitioner George E. Baldwin's Petition for a writ of certiorari in this Court, have filed copies here of their brief formerly filed in the Court of Appeals.

It will be necessary also to answer that brief here. On page 2 of their brief the Government Counsel in the trial Court and the Court of Appeals agree that Roger V.

Pierson, the first Government witness, was the attorney for Petitioner Baldwin in the preparation of his 1953 and 1954 Income Tax Reports. They admit the delivery by both Petitioner and said attorney Pierson to Government Agent Ronat of all of the George E. Baldwin income tax books, papers and records for the years 1953 and 1954. They also admit that Mr. Ronat had possession of those Records for nearly two years before the indictment. On pages 3 of that brief an alleged resume of Petitioner Baldwin's Income Tax Reports is given.

On page 4 of their brief, Counsel admit that during the year 1953 and the first half of 1954 George E. Baldwin (Defendant in the trial court, Appellant in the Court of Appeals and Petitioner here), was engaged in the sale of oil leases and interests therein. Counsel also admit that during the latter part of 1954 Petitioner was engaged in promoting the operation of a mining claim in Arizona, under the name of Arizona Material Service Company, a limited partnership in which Government Witness Craig and Petitioner were limited partners (App. 207). See also the item of $3,000 invested by Petitioner in the Danitz partnership (Petition 20, 21, 23).

Counsel also state that some 50 witnesses testified for the Government with reference to the payment by them to Petitioner here of various sums for interests in said oil leases (App. 18-174). Counsel state that the Arizona Material Service Company, a limited partnership, ceased operations in September for lack of funds.

Here, then, the Government agrees that the Arizona Material Service Company was a limited partnership and that Government witness Craig, and Petitioner Baldwin were limited partners. The Government agrees that there never was a partnership accounting with reference to said

Arizona Material Service Company. According to the decisions in the cases cited under Sub. VII on pages 18-24 of the Petition herein all questions with reference to that Company absolutely and entirely cease to be any part whatsoever of the issues in this case and particularly as to Petitioner Baldwin's liability to the Government on any question there. See also the question as to Petitioner Baldwin's liability in the Danitz Partnership (Petition, 20, 21, 23, 43).

Sections I to V on page 6 of the Government's brief will be answered in their order.

In answer to the statement under "Introduction" on page 8 Petitioner definitely claims that the evidence does not support the Verdict in this Case even viewing the record in the light most favorable to the Government.

In answer to the cases cited by Counsel on pages 7 and 8 we respectfully state they have no bearing on the issues here. There is no such case as the *Lynch* case reported as cited. The cases generally hold that where there is a sufficient evidentiary foundation to support the verdict a court of appeals must view the record in the light most favorable to the Government.

We respectfully suggest that there was no evidence to support the Government in questions 1 to 8 on Pages 2 and 3 of the Petition herein. See the cases cited under Subs. I to VII of the Petition herein.

In the case of *United States* v. *Phillips*, 217 F. 2d 435 cited by the Government at the top of page 9 and also cited by Petitioner here on pages 13 and 27 of the Petition the court's decision there was in favor of Petitioner here.

Answering item I under Sub. I on page 9 this Court's attention is called to the fact that counsel have merely referred to a number of portions of the record but have not stated how the same would apply here. Counsel state that said exhibits represent cash received for oil interests and mineral lands. Without some proof on the part of the Government as to the value of those oil interests sold or the cost of same to Petitioner Baldwin it is impossible to charge the amounts received for said oil interests as income to Petitioner. Petitioner has raised this question repeatedly without any answer by counsel for the Government. There might have been a loss to Petitioner in all or some of the oil transactions. *Furthermore we repeat that under* 26 U.S. Code 613 *Petitioner Baldwin is entitled to a 27½ percent depletion allowance on any profit which he would have made on any of the sales* of oil interests before being charged with any income tax under any circumstances. At the foot of page 9 Counsel refer to certain volumes and pages as proof of income to Petitioner Baldwin. Those references are to checks made by certain investors in oil leases or in interests in Arizona Material Service Company, a limited partnership or in the Danitz partnership. See Government Exs. 6A, 94, 17, 33, 57, 59, 65, 67, 68, 69, 71, 88, 89, and 95. See App. pp. 280, 281, 283, 288, 292, 302 and 303. None of these investments can be chargeable as income to Petitioner Baldwin. This is all the Government's own evidence. The same applies to the references at the top of page 10.

There is absolutely no basis for the statement that the account with Gerald Rock and brother Albert Baldwin were secret deposits. Albert Baldwin was a witness called by the Government. A casual reading of his testimony will show the reason for the account with Albert Baldwin, namely for convenience in cashing checks received by Peti-

tioner Baldwin. The same applies to the Gerald Rock account.

Incidentally the Government subpoenaed Gerald Rock as its own witness, kept him waiting to be called for two weeks and 3 days and then did not call him (App. 401). Counsel refer to the conflicting testimony of the Government's own witness, Jameson as to a refund. It is not clear as to what evidence was conflicting in the mind of Counsel for the Government.

We respectfully suggest to this Court that the claims set forth in Par. 4 on page 10 have no bearing here. The Government there admits that the checks in question were received for investments in oil leases. The same applies to the allegations set forth in Par. 5. Petitioner Baldwin testified in answer to Counsels' questions that he paid for trucks through oil properties. "It was an even trade for oil leases." The Government offered no proof to the contrary.

We do not understand what counsel mean by Pars. 6 and 7 on page 10. Net income would be what would be subject to tax against Petitioner Baldwin, defendant in the trial court.

The statement in the last paragraph on page 10 and the top of page 11 has no bearing here. We understand that Counsel's statement on page 11 re undeposited receipts for 1953 reduced by adjustments to $29,523.90 on which there is a tax due of $10,358.48 is the Government's final claim. The Government does not give Petitioner any credit there for the agreed taxable income of $3,473.23 on which a tax of $162.00 was paid.

On page 11 we understand that C P A Ronat's figures taken from his chart (Ex. 151 A), prepared by him during the trial differed from his figures prepared during the

nearly two years while he had the exclusive possession of all of Petitioner Baldwin's records and papers (App. 376). We assumed also that $47,021.00 is the Government's final figure for alleged undisclosed income from which additional expenses were deducted in the sum of $14,690.80, leaving the final sum of $32,830.20 and that *after adding* $1,072.00 *already reported* (which $1,072.00 should have been deducted rather than added) that the alleged final unreported figure will be $33,403.12. At the foot of page 11 counsel state under Sub. II that Defendant's tax returns for 1953 and 1954 were false with respect to his true adjusted gross income. Nowhere does the Government allege or claim that it even tried to prove wilfulness or specific intent on the part of Petitioner by any evidence other than mere understatement of income. (See Petition p. 15, Sub. V and the cases cited thereunder).

We refer particularly to the many decisions of this Court cited in the *Dearing* case (Petition 16) as well as the decisions of this Court cited in the *Small, Sr.* case (Petition 17). We repeat that the Government expert Ronat never intimated fraud on Petitioner's part. He limited his testimony to the statement of facts and figures only. It is difficult indeed to be helpful to this court in answering Counsel's reply to our brief in the Court of Appeals without furnishing this Court with a copy of our brief in the Court of Appeals. However we will say that we have not intentionally made any unfair statements there or here.

On page 13 of the Government's brief in the Court of Appeals it definitely states that "Defendant's business was the sale of leasehold interests in oil and mineral land and in promoting the recovery of oil by a process which had been developed in Illinois, the Defendant assuming the obligation of developing the production of oil from the old

wells in some instances." On page 13 the Government states that the Government accountant (Ronat) did not estimate the total of receipts but on the contrary testified in his opinion that Petitioner Baldwin did not deposit in his bank account net receipts of $34,884.07, which is not identical with the undisclosed income charged against defendant, Baldwin in that other adjustments reduced this amount in favor of the taxpayer to the sum of $29,528.90. We assume now that the *final definite amount* upon which the Government is here seeking to assess a tax against Petitioner Baldwin is $29,528.90 and not $34,884.07 mentioned by Mr. Ronat many times. And still in the very next page on page 13 of their brief Counsel state "As to Paragraph 3 on said page the Government accountant witness did not estimate the total receipts, but on the contrary testified in his opinion defendant (Baldwin) did not deposit in his bank account net receipts of $34,884.07 which is not identical with the undisclosed income charged against defendant (Baldwin) in that other adjustments reduce this amount in favor of taxpayer to the sum of $29,523.90. We respectfully state that the copy of defendant's (Baldwin) set forth on page 14 is correct according to the Government's own figures. It necessarily follows that the Government's statement on the same page is incorrect. On page 15 Counsel agree that even their countering table on page 14 does not reflect the adjusted income since adjustments were made with respect to the total undeposited item $34,884.07 in favor of the taxpayer in order to arrive at the actual unreported receipts in the year. Ronat says (App. 330), that the full unreported income for 1953 is $36,744.07. Then he says there was a deduction of $1,860.00, making a net total of $34,884.07. Ronat then mentions Attorney Pierson's finding of $58,880.38 with 2 adjustments to arrive at a total of $62,528.65. Ronat then men-

tions the figure of $61,528.65 as the total receipts. Again he states that the tax returns for 1953 show a correct business income of $53,519.86 appearing in the bank statement. On App. 331, Ronat says that his chart shows $34,884.07 with a deduction of $5,360.17 leaving *$29,523.90 which Ronat again says is the net unreported income.* He states that the adjusted gross income on the return was $3,473.20 on which a tax of $162.00 was paid (Ex. 1). On App. 332 Ronat tells that he arrives at the proper amount on which the tax should be based by adding $2,473.28. (The correct figure is $3,473.28, the amount on which tax was paid) to $29,523.90, "that I decided earlier to arrive at the corrected figure of $32,997.13, (App. 332). Evidently Ronat does not recognize that he is using $2,473.28 as the amount of income already reported rather than $3,473.28, the correct figure. Ronat then describes his charts. It is evident from the last figures that they do not agree with the Charts.

In spite of Ronat's figure of $29,523.90 as the final amount of *unreported income for* 1953, he again arrives at a figure of $32,997.13, that he adds $2,473.28, (should be $3,473.28) the amount already reported in Government Ex. I. The figure of $2,473.28 (actually $3,473.28 paid) cannot under any theory be considered unreported income on which Ronat was seeking to impose an additional liability for unpaid taxes for 1953.

On page 15 Counsel claim the unreported income to be $34,884.07. At any rate we will try to show this Court the final correct figures as to the unreported income taxes due for 1953, if any. From the above it is clear the Government figures "is based upon Ronat's own opinion."

We again call Counsel's attention to Sub. III, pages 12-17, of the Baldwin petition herein. There is not a word in the record even tending to prove Petitioner guilty

of tax evasion under the rules there laid down. This applies especially to the rule announced in the cases cited under Sub. V on page 15 of the petition herein.

It is entirely clear from a careful reading of the Government's brief and the record in this case that *the Government has entirely failed to prove beyond a reasonable doubt by clear and convincing evidence that Petitioner Baldwin deliberately and wilfully and with specific intent sought to evade any income tax for either of said years. It is just as clear that the Government has failed to offer any independent evidence whatsoever, outside of the alleged proof of unpaid income, to support the element of wilfullness. In other words proof of unreported income, if it is income, without independent and separate evidence of wilfullness is not sufficient evidence upon which to base the Government's attempt to send a taxpayer to prison, no matter how much income that taxpayer may* (See Sub. V, page 15 of Petition here) actually owe. Under the evidence in this case Petitioner Baldwin owes no tax.

It is natural that Counsel would and *must* rely upon the testimony of CPA Ronat. Mr. Ronat has shown in this record in many instances, various reasons for which his testimony can not be finally relied upon.

C.P.A. Ronat at one point estimates that Petitioner's unpaid income taxes for 1953 would be based upon $25,917.69 (App. 346). At another point he says he arrived at a figure of $47,021.00 from which $14,690.80 should be deducted leaving $32,330.20 (App. 348). At App. 332 he corrected the adjusted gross figure by adding the adjusted gross income as reported in Petitioner's 1953 Income Tax Report as $2,473.23 (he should have said $3,473.23) (See Gov. Ex. 1) added to $29,523.90 to make the corrected figure $32,997.13. At App. 331 Mr. Ronat says the net figure is $29,523.90.

At App. 330 Mr. Ronat states that the full total of the unreported items for 1953 is $36,744.07 from which should be deducted $1,860.00 (total of non-currency deposits) leaving a final figure of $34,884.07. See also App. 329.

At App. 313 Mr. Ronat stated that as a part of his investigation and as an expert he made determination as to whether in his opinion *"that was or was not income"*. Mr. Ronat went on to state his system of analysis (App. 313). He stated that the charts were prepared by him. He then stated the manner of such preparation (App. 315, 316).

He testified that Government's Ex. 1 for 1953 showed the total receipts of business and profit of $61,528.65. He stated that Mr. Pierson used total bank deposits of $58,880.03 in his work sheet to which he later added other items.

Mr. Ronat stated that in Government's Ex. 2 the business receipts were shown on the return for 1954 as $29,519.65 as computed by Mr. Pierson and that the actual deposits used were $5,307.69 for 1954 and that as a result of this analysis the deposits in the bank traceable to business receipts would be $47,792.77 a difference of $2,482.00. This is unbelievable.

Under Sub. III on page 12 counsel for the Government are in error in claiming that we stated herein that Petitioner Baldwin's disbursements for the years 1953 and 1954 exceed gross receipts in excess of $74,000.00 and $60,000.00 respectively. Neither were those figures set forth at the trial.

The Government's witness, H. O. Burckhalter (App. 275), testified that during 1953 Petitioner had paid Burckhalter's company Texhio, $3,661.73 for drilling operations.

The Government's witness, Arthur Leisy (App. 33, 53), testified that he paid Petitioner the sum of $10,000.00 for drilling operations during 1953.

The Government's Witness, H. G. Pruett (App. 130-139) testified that Defendant had paid him $24,000.00 for drilling operations during 1953. The Government's witness, Helen Watts (App. 177), testified that Defendant had paid her during 1953 the sum of $10,500.00 for remodeling.

The question in this case, as we understand Counsel's claim is, whether Petitioner Baldwin criminally evaded reporting an income of $34,884.07 reduced to $29,523.90 on which the true tax, according to Counsel, would be $10,358.48 for 1953 or whether Expert Ronat would concede that the taxpayer would be entitled to credit for what he actually paid on an admitted adjusted gross income of $3473.23. Under Sub. II at foot of page 11 Counsel clearly claim that Petitioner Baldwin's return for 1953 and 1954 were false. We respectfully and definitely deny that contention. We have carefully read the pages cited by counsel. We respectfully state that no such admissions were made by Petitioner Baldwin.

Counsel admit in paragraph 5 on page 16 that Petitioner here paid $10,000.00 to Leisy in 1954. Under paragraph 6 on page 16 Counsel admit the expenditure of all of the items there mentioned. Counsel ended that paragraph with the statement that Government witness Pruett's testimony proved business expenses. Counsel's paragraph 7 at the foot of page 16 and the top of page 17 is conceded.

On page 23 under Sub. IV of the Government's brief counsel contend that the question of Petitioner having acted under the advice of counsel was a question for the jury. We respectfully state that the Government offered no evidence whatsoever on that question. Furthermore attorney Pierson, the Government's first witness, definitely testified that Petitioner acted on his attorney's advice (Petition page 6).

The testimony of the Government's witness Pierson, quoted by counsel on page 24 proves conclusively that Petitioner had the absolute right to, and did, depend upon the advice of his attorney Pierson. We agree that the cost of the two parcels of real estate purchased by Petitioner cannot be charged against his income. We do, however, claim that he can deduct from his income the cost of any repairs or reasonable improvements.

At the close of the Government's brief on page 31 counsel claims that "*defendant's* (Petitioner) *failure to supply his attorney* (Pierson; the Government's first witness) *with a complete record of his total receipts, coupled with all the other circumstances in this case,* (such circumstances are not mentioned) *disclose overwhelmingly his own personal knowledge, specific intent, evil motive, and wilfulness to which he could not close his eyes.*"

We respectfully state that the record is clear that the Government has proven nothing more than a possible difference in actual net income for the two years.

Under the cases cited on pages 12 to 18 of the Petition here such proof fails to convict Petitioner for the reason that *the Government utterly failed to prove Petitioner's alleged wilfullness by some independent evidence beyond the proof of the mere understatement of income.*

Furthermore the Government has offered no evidence whatsoever to deny the positive statement of both attorney Pierson (the Government's own first witness) and Petitioner that he, in good faith, made full disclosure to his attorney Pierson who advised Petitioner that his income tax reports for the years 1953 and 1954 were correct. (See Petition pages 6 and 7).

The evidence in this case proves conclusively that Petitioner received no income for either 1953 or 1954 beyond that reported. In fact Petitioner did not receive as much net income for either of said years as was actually reported.

Petitioner disclosed to his attorney (the Government's first witness) all of the facts with reference to his income for each of said years 1953 and 1954. Petitioner relied upon and acted upon the advice of his said attorney.

The Government did not see fit to deny Petitioner's specific statement that he never intended to conceal anything from the Government, Mr. Pierson his attorney, or anyone else (App. 708-709).

The record in this case conclusively proves that even the 57 witnesses called by the Government to testify against Petitioner at the trial testified to payments by them to Petitioner for the assignment by him to them of interests in oil and gas leases. The Government did not offer any evidence in this criminal case as to whether Petitioner received enough from such assignments to give him any profit after the deduction of the usual 27½ percent depletion allowance from such net income, if any.

Under the evidence offered by the Government there was no income to Petitioner on which any tax could be imposed upon him.

Petitioner's courtesy together with those of his attorney Pierson (the Government's first witness), in handing over to Government agent Ronat all of the books, documents and papers in their possession, all of which Mr. Ronat kept for nearly two years, surely would not induce any reasonable person to believe that Petitioner was guilty of the specific intent, evil motive and wilfullness charged by the Government against petitioner. Actually the Government did nothing more than try to prove that Petitioner merely *received more* income than he reported. The word "fraud" is nowhere used in Mr. Ronat's entire testimony.

For the reasons herein stated Petitioner should have been found not guilty.

Counsel concede on page 26 that the law is "that partnership income is not as such taxable under the income tax laws."

That eliminates the alleged income to Petitioner from the two partnerships known as Arizona Material Service Co. and Gdnaitz (Danitz).

Under the evidence in this case and the decisions of the Courts herein cited, Petitioner Baldwin should have been declared not guilty by the trial Court and the Court of Appeals.

Finally it is entirely certain from the record in this case that the Government proved beyond a reasonable doubt the following:

1. That after the deductions set forth in said bank statements there was anything more than a profit of $435.48 for 1953 and a profit of $271.32 for 1954. The Government offered no proof as to the deductions mentioned in said bank statements.

2. That Petitioner Baldwin had no net income subject to tax for either of said years 1953 or 1954 beyond that actually reported and paid.

3. That there was no excess of income over expenses for either year.

4. That the Government offered no proof whatsoever of Petitioner's wilfullness involving a specific intent by independent evidence other than mere understatement of income.

5. That the Government, by its own first witness, Roger V. Pierson (Petitioner's attorney) proved that said attorney Pierson prepared Petitioner's income tax returns for 1953 and 1954 after full disclosure of the facts by Petitioner to his said attorney in good faith.

6. That Petitioner relied upon and acted upon the advice of his attorney, Roger V. Pierson in the preparation of said income tax returns for the years 1953 and 1954.

7. That the Government had no right whatsoever to charge Petitioner, as income, with any receipts by him in and about the two partnerships, Arizona Material Service Co. and Gdanitz (Danitz).

We therefore respectfully petition this Honorable Court to grant the relief requested in Petitioner's Petition and in his answer to the two briefs filed by the Government herein.

Respectfully submitted,

GEORGE E. BALDWIN
Petitioner

By HARRY C. KINNE
His Attorney

Counsel wishes to thank the Court and Counsel for their courtesy to me.

Harry C. Kinne